IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14970 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PADRA TALUKA KHEDUT CO OP COTTON SALE GINNING AND
Versus
UMARGANI KARIMBHAI VORA

Appearance:
1. Special Civil Application No. 14970 of 2003
MR SHIRISH JOSHI for Petitioner No. 1
MR BS PATEL for Respondent No. 1
MRS RANJAN B PATEL for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 15/10/2003

ORAL JUDGEMENT

Rule. Mr.Patel, who appears on caveat, waives service of rule on behalf of respondent. With the consent of learned counsel for parties, matter is taken up for final hearing today.

2. The present petition is preferred challenging the legality and validity of the exparte judgment and award, dated 28.9.1999 passed by the Ld.Registrar of Board of Nominees at Baroda and the order dated 26.9.03 passed by the Gujarat State Cooperative Tribunal in Appeal No.146/00 whereby the appeal is dismissed and the judgment and award of the Ld.Nominee is confirmed. Having heard Mr.Joshi, Ld.advocate for the petitioner as well as Mr.Patel, Ld.advocate appearing for the respondent there is no dispute on the point that the judgment and award passed by the Ld.Nominee is exparte. There is also no dispute on the point that the tribunal has not touched the merits of the matter but has concentrated on the question of limitation and nonfiling of application for condonation of delay.

3. After some arguments, learned counsel appearing for both sides agreed that if the petitioner is directed to deposit Rs.15,000/- more in the civil court which is executing the degree and if the amount of Rs.40,000/which is already deposited and + Rs.15,000/- additional, total Rs.55,000/- is allowed to be withdrawn by the respondent upon furnishing solvent surety to the satisfaction of the civil court and if the suit is ordered to be disposed of after retrial within some time bound programme, the same would be acceptable.

4. I would have recorded the reasons for setting aside the exparte judgment and award and for interferring with the order passed by the tribunal, but since the learned counsel appearing for both sides have agreed, I find it proper not to record the reasons. At the same time, even if it is an exparte judgment and award, no litigant should be allowed to take undue benefit of lapse and therefore while considering the matter for exercising the judicial discretion, the court should put the party to condition of depositing the amount who is facing exparte judgment and award. In the present case, the petitioner has already deposited Rs.40,000/- in the execution proceedings and the petitioner has shown his willingness to deposit further amount of Rs.15,000/-. Therefore, in my view, if the petitioner deposits Rs.55,000/- and if the respondent is allowed to withdraw pending retrial of the suit, same would be in the interest of justice. Further, as the suit is of 1989 even if the learned nominee has to retry the suit it should be disposed of as early as possible within some time bound programme. Ld.counsel for both sides have

agreed and have assured that their respective clients shall cooperate with the learned nominee if the suit is ordered to be retried within some time bound programme.

5. In view of the above, I am of the view that the following order shall meet with the ends of justice:

(i) The petitioner shall deposit amount of Rs.15,000/-with the civil court which is executing the exparte judgment and award of the learned nominee. Such amount of Rs.15,000/- to be deposited within four week from today.

(ii) The respondent shall be at liberty to withdraw the amount of Rs.40,00/-already deposited by the petitioner in the execution proceedings before the civil court and he shall also be at liberty to withdraw the additional amount of Rs.15,000/- as and when deposited.

(iii) The respondent shall furnish solvent surety to the satisfaction of the learned civil judge at the time of withdrawal of Rs.40,000/- and later on Rs.15,000/additional amount as the case may be and such solvent surety should be equal to the amount which is to be withdrawn.

(iv) After fulfilling aforesaid conditions the exparte judgment and award passed by the learned nominee dated 28.9.99 in Lavad Case No.262/89 and the judgment and order passed by the tribunal, dated 26.9.03 in Appeal No.146/00 shall stand quashed with further direction that the matter shall be restored to file of the learned nominee and the learned nominee shall give opportunity of hearing to both sides and retry the suit and shall render decision as early as possible preferably within a period of six months from the report of compliance of the aforesaid first three conditions.

(v) The deposit of the aforesaid total amount of Rs.55,000/-and its withdrawal shall be subject to final judgment and the award which may be passed by the learned nominee after retrial of the suit.

6. The petition is allowed in terms of the aforesaid directions. Rule is made absolute accordingly. DS to both sides permitted.

15.10.03 (JAYANT PATEL,J)